

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RAMON VILLANUEVA-BAZALDUA,)
individually and on behalf of others)
similarly situated,)

Plaintiff,)

v.)

TRUGREEN LIMITED PARTNERS¹ and,)
TRUGREEN, INC.², d/b/a TRUGREEN)
CHEMLAWN³,)

Defendant.)

Civil Action No.: 06-185 (GMS)

**DEFENDANT'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF
IN FURTHER SUPPORT OF ITS OPPOSITION TO
PLAINTIFF'S EXPEDITED MOTION TO CONDITIONALLY CERTIFY A
FLSA COLLECTIVE ACTION**

Defendant TruGreen Limited Partnership d/b/a TruGreen ChemLawn ("TruGreen"), by and through its attorneys, hereby moves for leave to file a Supplemental Brief in Further Support of Its Opposition to Plaintiff's Expedited Motion to Conditionally Certify a FLSA Collective Action. The grounds for this Motion are as follows:

1. As set forth in TruGreen's counsel's correspondence to the Court dated September 13, 2006 (Docket No. 29), TruGreen requested a stay on any decision on Plaintiff's Motion to Conditionally Certify A FLSA Collective Action (Docket No. 14) until after Mr. Villanueva-Bazaldua's deposition, then scheduled for October 5, 2006. TruGreen further noted

¹ The correct legal name is TruGreen Limited Partnership.

² TruGreen, Inc. was not Plaintiff's employer, and therefore, is not a proper party in this action.

³ TruGreen, Inc. does not do business as (d/b/a) TruGreen ChemLawn; TruGreen Limited Partnership does do business as (d/b/a) TruGreen ChemLawn.

in its correspondence to the Court that it intended to file "appropriate supplemental briefs regarding the matters at issue based on relevant information obtained during Mr. Villaneuva-Bazaldua's deposition." Indeed, the Court queried in its October 18, 2006 Notice of Scheduling Conference (Docket No. 33) whether Plaintiff's deposition impacted the parties' positions and whether supplemental briefing was warranted.

2. Counsel for TruGreen deposed Plaintiff on Thursday, October 5, 2006, and believes that supplemental briefing is warranted.

3. More specifically, TruGreen believes that Plaintiff's admissions and acknowledgments under oath give further credence to the arguments first set forth in TruGreen's initial opposition memorandum. Accordingly, TruGreen has prepared a Supplemental Brief (attached as Exhibit A hereto) intended to highlight the relevant portions of Plaintiff's deposition and related legal precedent that, taken together, demonstrate further why Plaintiff's Motion for Conditional Certification should be denied.

4. TruGreen believes that the attached Supplemental Brief will assist the Court and the parties in preparing for the discussion to be held regarding Plaintiff's Motion to Conditionally Certify A FLSA Collective Action during the scheduled status/scheduling conference.

5. Accordingly, for all of these reasons, Defendant seeks leave to file the attached Supplemental Brief, which provides the Court with key undisputable facts and relevant precedent that further demonstrate why Plaintiff's request for conditional certification should be denied.

WHEREFORE, for all of the foregoing reasons, Defendant TruGreen Limited Partnership respectfully requests that its Motion for Leave to File a Supplemental Brief in Further Support of

its Opposition to Plaintiff's Expedited Motion to Conditionally Certify a FLSA Collective Action be granted and that the attached Supplemental Brief be deemed to be filed as of that date.

Respectfully submitted,

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OF COUNSEL:
MORGAN, LEWIS & BOCKIUS, LLP

Dated: October 20, 2006

Attorneys for Defendants

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ORDER

AND NOW, this ____ day of _____, 2006, upon consideration of Defendant TruGreen Limited Partnership d/b/a TruGreen ChemLawn ("TruGreen"), by and through its attorneys, hereby moves for leave to file a Supplemental Brief in Further Support of Its Opposition to Plaintiff's Expedited Motion to Conditionally Certify a FLSA Collective Action., it is hereby ORDERED, ADJUDGED, and DECREED that said Motion is GRANTED and that TruGreen's Supplemental Brief attached as Exhibit A to this Motion for Leave shall be deemed to be filed as of the date hereof.

The Honorable Gregory M. Sleet

EXHIBIT A

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OPPOSITION TO PLAINTIFF'S EXPEDITED MOTION TO
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I. INTRODUCTION

Plaintiff Ramon Villanueva ("Plaintiff"), the sole named plaintiff in this action, purports to bring this action against Defendant TruGreen Limited Partnership d/b/a/ TruGreen Chemlawn ("TruGreen") on behalf of himself and what he conclusorily deems "all other similarly situated H-2B workers" currently or formerly employed by TruGreen. More specifically, Plaintiff seeks to certify a collective action under Rule 216(b) of the Fair Labor Standards Act ("FLSA") as to his claims that – even in the absence of any specific legal obligation to do so – TruGreen unlawfully failed to compensate him or other H-2B workers for certain expenses incurred with their respective H-2B employment. He also seeks to represent the same class of individuals as to

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a hodgepodge of contract-based claims, all of which are premised on Plaintiff's allegations that certain promises made to him in Mexico regarding his wages and certain perquisites that he would receive when he arrived in the United States as an H-2B worker were altered by TruGreen once Plaintiff arrived at his branch in Wilmington, Delaware.

By seeking to represent himself and all other H-2B workers for all of these claims, Plaintiff alleges – as he must – that he and his claims are "similarly situated" to the claims of other H-2B workers. See generally Moeck v. Gray Supply Corp., No. 03-1950, 2006 WL 42368, at *4 (D.N.J. Jan. 6, 2006). Recognizing his burden of proof on that point, Plaintiff filed the pending Expedited Motion to Conditionally Certify An FLSA Collective Action. In addition, if he is to maintain a class action as to his contract-based claims, Plaintiff ultimately will need to satisfy, among other things, the commonality and typicality standards under Rule 23 of the Federal Rules of Civil Procedure, which standards necessarily involve an analysis strikingly similar to the "similarly situated" analysis under the FLSA. He also will need to demonstrate that he can meet the adequacy standards essential to serving as a class representative. However, Plaintiff made clear during his October 5 deposition that he cannot possibly meet any of those standards.

Far from being a routine deposition of an adequate and informed class representative, Plaintiff invoked the Fifth Amendment as to every question relating to his employment in the United States subsequent to his employment with TruGreen, which ended voluntarily in July 2004. As may be obvious, TruGreen's counsel was surprised at Plaintiff's steadfast refusal to answer questions that clearly related to the allegations in the Complaint *he* chose to file. His refusal to answer questions relating to his employment in the United States subsequent to his employment with TruGreen necessarily implicates his credibility and capability to adequately

represent the interests of others and therefore, his ability to serve as a named Plaintiff in any type of collective action.

Moreover, the testimony that he did provide only further reinforced the other arguments as to why this matter is not appropriate for collective treatment under the FLSA or even for class-wide treatment as to the breach of contract and related claims. In short, by Plaintiff's own admissions and explanations, he cannot demonstrate even the basic factual showing that his claims and those of the other putative plaintiffs are similarly situated let alone common or typical. Accordingly, TruGreen respectfully submits this Supplemental Brief to highlight how Plaintiff's admissions under oath undermine, as a matter of law, his improper effort to open to nationwide discovery and class-wide treatment what, at best constitutes his individualized action against TruGreen.

II. ARGUMENT

A. Plaintiff's Refusal to Answer Questions at His Deposition Precludes Him From Serving As a Lead Plaintiff in a Class or Collective Action.

Federal Rule of Civil Procedure 23(a)(4) requires that the representative plaintiff be willing and able to prosecute an action vigorously and to adequately represent the interests of others. After hearing Plaintiff's deposition testimony, TruGreen has serious concerns about both his ability and his willingness to adequately represent the interests of others, and seriously doubts that he is similarly situated to other H2-B workers his counsel seeks to represent.⁴

First, by invoking the protection of the Fifth Amendment of the United States Constitution, Plaintiff refused to answer at least six questions regarding whether or where he worked in the United States in the years after his employment with TruGreen and how many

⁴ In addition, Plaintiff's status necessarily impacted the conduct of the deposition, as Plaintiff's counsel warned TruGreen's counsel that Plaintiff "ha[d] to catch an airplane to Mexico [so] [t]he deposition has to be end (sic) by 2:30." (Villanueva Tr. pp. 16-17.)

hours he worked for any U.S. employer after TruGreen. As further explained by his counsel, Plaintiff intended to invoke the Fifth Amendment "for any question like that." (Transcript of Ramon Villanueva, Oct. 5, 2006 (hereinafter "Villanueva Tr."), pp. 12-16, 22-23, 30-33.)⁵ Although Plaintiff acknowledged that he has never held any other H-2B positions after TruGreen (Villanueva Tr. p. 22), he unequivocally refused to answer whether any employer for whom he worked in 2006 paid his travel- or visa- related expenses, as he contends in his Complaint TruGreen should have done. (Villanueva Tr. pp. 31-33.)

As a result, Plaintiff effectively precluded TruGreen from fully exploring questions that go directly to his ability to serve as a lead plaintiff purportedly representing the interests of others in this case. For example, TruGreen has a genuine and legitimate interest in understanding Plaintiff's work visa status, or lack thereof, and whether there are any circumstances that may preclude Plaintiff in the future from traveling freely to the United States. By invoking the Fifth Amendment to these basic and foundational questions, TruGreen (and this Court) lack any understanding of and have been deprived of any future opportunity to understand whether Plaintiff might not, at some point in the future, be able to legally return to the country for hearings, depositions, mediation, settlement conferences, or even for trial. If Plaintiff cannot be candid in these proceedings or fully participate in them, he simply cannot be and is not an adequate representative. See, e.g., In re Safeguard Scientifics, 216 F.R.D. 577, 582-83 (E.D. Pa. 2003) ("[S]erious concerns with credibility leave Lead Plaintiff vulnerable to further attacks that would impose an unnecessary disadvantage on the class. These unique defenses against Lead Plaintiff [] preclude him from serving as a class representative."); Weikel v. Tower Semiconductor Ltd., 183 F.R.D. 377, 396 (D.N.J. 1998) (noting both that "[t]he fact [the named

⁵ A true and correct copy of Plaintiff's deposition transcript is attached hereto as Exhibit A.

plaintiff] may not be readily available to attend trial has the potential for seriously interfering with his obligation to vigorously prosecute this action" and "[i]t would be inappropriate to subject members of the Class to potential trial delays created by a class representative"); Wagner v. Lehman Bros. Kuhn Loeb, Inc., 646 F. Supp. 643, 660-61 (N.D. Ill. 1986) ("A court need not resolve the issue of credibility against the putative class representative in order to bar class certification. It is enough to note the existence of a credibility problem and its potential adverse impact on the class."); Strykers Bay Neighborhood Council Inc. v. New York, 695 F. Supp. 1531, 1537 (S.D.N.Y. 1988) (deeming named plaintiffs inadequate representatives because they failed to respond to discovery requests); Kline v. Wolf, 702 F.2d 400, 403 (2d Cir. 1983) (concluding that the district court is not required to resolve the issue of credibility or to find that the plaintiffs testified falsely, but rather that simply making a "preliminary determination that [the lead plaintiffs'] credibility was vulnerable to attack" is sufficient).

Furthermore, it is settled that "[t]o be an adequate representative, the named plaintiff must demonstrate a willingness and ability to play an active role in and control the litigation and to protect the absent class members." J.B.D.L. Corp. v. Wyeth-Ayerst Labs., Inc., 225 F.R.D. 208, 216 (S.D. Ohio 2003). In his deposition, Plaintiff admitted under oath that, in the past, if other people were willing to sign certain documents, he believed that he "didn't have to pay attention to them in particular . . . and so [he] signed." (Villanueva Tr. p. 41.) An admitted willingness to sign documents that he has not even read strikes at the heart of Plaintiff's ability to protect the interests of the putative class and again differentiates him from other current and former TruGreen employees who take a more reasonable and considered approach to their contractual and other obligations.

TruGreen has had the good fortune of employing law-abiding H-2B workers who come back to TruGreen year after year on a seasonal basis without any questions as to the legality of their presence in the United States. After his deposition, namely his refusal to answer any questions going to his ability to travel at some later date into the United States, TruGreen cannot say the same of Plaintiff. Thus, for this reason alone, Plaintiff has unequivocally set himself apart from other current and former TruGreen employees who are not constrained to talk about their status or related issues. Indeed, given that Plaintiff left in the middle of the 2004 season and cannot explain his employment in the United States in 200 (if any), it seems obvious that he is not an appropriate lead Plaintiff here, where Plaintiff has made the focus of his Complaint the terms and conditions of employment he received from TruGreen in 2004. For all of these reasons, this Court should not grant Plaintiff's Motion to Conditionally Certify a FLSA Collective Action, as he has no basis to lead this case on behalf of others purportedly similarly situated to him.

B. Plaintiff's Testimony Regarding His Own Expenses and Payments from TruGreen Highlight Why He and the other H-2B Workers Are Not "Similarly Situated" So As To Justify Collective Action Treatment.

In a collective action under the FLSA, it is, at all times, the plaintiff's obligation to come forward with evidence of a "reasonable basis" for the claim of class-wide relief. See generally Grayson v. K-Mart Corp., 79 F.3d 1086, 1096 (11th Cir. 1996). Even at the early stage of conditional certification at which this matter rests, the Court must satisfy itself that there are other employees of the defendant who not only desire to opt-in,⁶ but also are "similarly situated" to the plaintiff. Felix De Ascencio v. Tyson Foods, 130 F. Supp.2d 660, 663 (E.D.Pa. 2001).

⁶ Tellingly, more than seven months have passed since Plaintiff filed his Complaint, but he has not presented one declaration other than his own to substantiate that he is similarly situated to other H-2B workers let alone that any other current or former TruGreen H-2B worker desires to opt-in to this matter.

Plaintiff still must provide "substantial allegations that the putative class members were together the victims of a *single* decision, policy or plan." See generally Grayson, 79 F.3d at 1097-99 (emphasis added). Further to that point, Plaintiff must do more than rest on his own speculation; rather, he must demonstrate an actual "factual nexus between [his] situation and the situation of other current and former [employees] sufficient to determine that they are 'similarly situated.'" Hoffman v. Sbarro, Inc., 982 F. Supp. 249, 262 (S.D.N.Y. 1997); see also De La Cruz v. El Paso County Water Improvement Dist. No. 1, No., EP-05-CV-206-FM, 2005 WL 2291015, *2 (W.D.Tex. Sept. 19, 2005) (refusing to certify a class for alleged failure to pay overtime because the court had before it "only unsupported assertions of violations that are not sufficient to meet Plaintiff's burden. No affidavits that would provide evidence that others are similarly situated was submitted by Plaintiffs."); D'Anna v. M/A-COM, Inc., 903 F. Supp. 889, 894 (D. Md. 1995) (denying motion to send notice because plaintiff's allegations were "broad and vague" and lacked "factual support" for the existence of a potential class). Here, Plaintiff's deposition testimony confirms that there is not and cannot be any "factual nexus" between the matters at the heart of his FLSA claim – his expenses and reimbursements while employed at the Wilmington, Delaware location – and the expenses and reimbursement of TruGreen's current and former H-2B workers at other locations across the country.⁷

⁷ To the extent Plaintiff is suggesting that Defendant's use of the fluctuating workweek method of overtime compensation constitutes a violation of the FLSA for which collective treatment is appropriate, that claim fails, too, as a matter of law. By definition, in order to establish a claim with respect to the fluctuating workweek, each putative plaintiff must demonstrate that (1) he has hours of work that do not fluctuate from week to week; (2) he did not receive a fixed salary as straight time pay for whatever hours he worked; and (3) he did not have a clear mutual understanding that the fixed salary is compensation (apart from overtime premiums) for the hours worked each workweek rather than for working 40 hours or some other fixed amount. 29 C.F.R. § 778.114(a). Thus, by definition, the claims of any TruGreen employee with respect to use of the fluctuating workweek method is marked by factual distinctions, including, but not limited to, whether the individual employee agreed to

Most notably, Plaintiff broadly asserts in his Complaint that TruGreen did not account for the expenses incurred by H-2B employees, including him. In his deposition, however, (and consistent with the Declaration of Michael Matejik, attached as Exhibit B to Docket No. 18), Plaintiff admitted that he was given \$150 in cash upon his arrival in Delaware to use for whatever reason he deemed appropriate. (Villanueva Tr. pp. 44-45.) This payment occurred prior to him engaging in any work, and he never had to repay TruGreen for these funds. (Villanueva Tr. pp. 44-45.) Although Plaintiff chose not to do so, there was nothing preventing him from applying those amounts to the expenses he allegedly incurred in obtaining his H-2B visa. (Villanueva Tr. p. 45.) Similarly, Plaintiff admitted in his deposition (and contrary to the allegations in his Complaint) that TruGreen purchased the airline ticket that enabled him to return home to Mexico even though Plaintiff chose to end his employment with TruGreen just midway through the season.⁸ (Villanueva Tr. p. 17.)

Thus, completely contrary to the allegations of the Complaint, Plaintiff received an unconditional amount of money at the commencement of his employment to pay for whatever Plaintiff deemed necessary and appropriate and another unconditional payment for his return expenses at the end of his employment. Where the named plaintiff does not even have a "factual nexus" to the allegations in the Complaint, he clearly cannot satisfy his burden of offering to the Court any such nexus between him and the allegedly similarly situated potential plaintiffs. Indeed, as Plaintiff's own testimony reveals, there apparently is no single policy or practice as to which H-2B workers receive unconditional payments upon their arrival, return transportation

the fluctuating workweek compensation plan. As set forth in Section II.C, Plaintiff admittedly knowingly accepted a compensation structure that was premised on the fluctuating workweek method of compensation.

⁸ Plaintiff claims that he paid \$75 cash to cover "the remainder of what the [airline] ticket cost after the cost of the bus." (Villanueva Tr. pp. 17-18.) He does not, however, dispute that TruGreen paid for his return airline ticket.

expenses, or perhaps even additional payments to cover expenses during the season. Plaintiff readily admitted that he does not even know whether any workers at the Wilmington branch asked the Branch Manager for money (unconditionally or otherwise) or even how other TruGreen branches pay their H-2B workers. (Villanueva Tr. p. 45.) Indeed, TruGreen does not have a policy or practice that either prohibits or requires Branch Managers to provide additional payments to H-2B workers, but rather leaves it to the discretion of each Branch Manager. (Declaration of James Vacchiano, dated May 12, 2006, at ¶ 4, a copy of which is attached as Exhibit A to Docket No. 18.) As such, the only way to determine which H-2B workers received payment for their expenses – whether in or whole or in part, if at all – is to ask each individual H-2B worker – an inquiry that is directly contrary to the purpose and nature of a collective action.⁹ See, e.g., Lawrence v. Philadelphia, No. 03-CV-4009, 2004 WL 945139, at *2 (E.D. Pa. Apr. 29, 2004) (rejecting request for certification because “the questions of fact will likely differ for each Plaintiff and will be unduly burdensome to both Defendant and to the Court in managing as a collective action”); Morisky v. Public Serv. Elec. & Gas Co., 111 F. Supp.2d 493, 497-98 (D.N.J. 2000) (denying FLSA collective action certification where a “highly fact-specific analysis of each employee's job [duties and] responsibilities” would be required); Bayles v. American Med. Response of Colo., Inc., 950 F. Supp. 1053, 1065 (D. Colo. 1996) (“It is

⁹ Similarly, in the Complaint, Plaintiff asserts that he is similarly situated to other current and former TruGreen H-2B workers because each incurred the following expenses in connection with their employment with TruGreen: the cost of obtaining a Mexican passport, visa application and issuance fees, a border crossing fee, a third-party administrative fee paid for processing the visa paperwork, and transportation expenses to the place of employment in the United States. See Complaint ¶ 19. At his deposition, however, Plaintiff acknowledged incurring only the “the amount for the office in Guanajuato, . . . and then the cost for the visa . . . and then the cost for transportation from my home to Delaware” in connection with his employment with TruGreen. (Villanueva Tr. p. 29-30.) Thus, by Plaintiff's own admission, *he* did not incur all of the expenses alleged in the Complaint, and, therefore, cannot be similarly situated to other H-2B employees who either incurred only some or, perhaps, none of the expenses put at issue in the Complaint.

oxymoronic to use [a collective action] device in a case where proof regarding each individual plaintiff is required to show liability"); Wertheim v. Ariz., No. Civ. 92-0453 PHX RCB, 1992 WL 566321, at *4 (D. Ariz. Aug. 4, 1992)

In addition, Plaintiff admitted at his deposition to traveling freely to and from the United States using his passport, including frequent trips within the past six months to visit an uncle in California and other friends. (Pl. Tr. 9-12.) However, in the Complaint, Plaintiff asserts that TruGreen should have paid for the cost of his passport because it was "primarily for the benefit of the employer." (Complaint ¶ 22.) By Plaintiff's own testimony, it strains credulity that his passport was "primarily for the benefit of the employer" when Plaintiff was using his passport two years removed from his employment with TruGreen to travel to and from the United States as a tourist, simply visiting family and friends. It remains unclear what benefit, let alone primary benefit, TruGreen derives from that.

In short, putting aside that there is no legal requirement for TruGreen to pay or otherwise account for the expenses incurred by H-2B workers, Plaintiff's deposition testimony makes clear that the proof of whether such expenses were, in fact, incurred and/or paid by TruGreen is entirely specific to the individual. Accordingly, those admissions under oath put this matter squarely within the reasoning of the district court in Moeck, in which the court denied plaintiffs' motion for conditional certification in an FLSA action based on an overtime policy that allegedly varied among branches and even within branches. Id. at *5. That court reasoned, in words particularly applicable here, "[b]ecause of the many potential distinctions of each putative class member's claim, the Court finds that this case is not an appropriate one for class action certification, even at this early stage in the action." Like the court in Moeck, this Court should deny Plaintiff's motion for notice and collective treatment in its entirety.

C. Plaintiff's Fraud, Breach of Contract, and Breach of Covenant of Good Faith and Fair Dealing Claims Are Unsuitable for Class Treatment.

Just as Plaintiff's motion to conditionally certify a collective action should be denied in light of the undisputable facts revealed at Plaintiff's deposition, so too should any future effort to certify the same class as to the contract-based claims alleged in Plaintiff's Complaint. The crux of those claims is that the expenses and compensation structure identified to Plaintiff in Mexico before he accepted employment with TruGreen were not actually the expenses incurred by and compensation eventually paid to him once he was employed by TruGreen. However, Plaintiff's claims are entirely inconsistent with and disconnected from the facts, which clearly demonstrate that there is no legitimate basis for his claims and, therefore, no basis for his attempt to represent others as to their potential claims.

First, as to the expenses, Plaintiff knowingly agreed, before traveling to the United States, to pay \$405 for his rent, utilities, and transportation during his employment in the United States. (Villanueva Exhibit 2 (authenticated at p. 34) noting \$373 for rent and utilities per month and \$32 for transportation charges per month.) As Plaintiff testified, he was aware of those proposed charges, but he believed that TruGreen offered the highest compensation relative to all other employers, and the expenses were worth the exchange. (Villanueva Tr. 23-24, 43-44.) However, Plaintiff ultimately paid only \$240 per month for those expenses. (Compare Pl. Ex. 2 with Villanueva Tr. pp. 34-35.) Thus, the only "breach" that occurred between the expenses identified to Plaintiff in Mexico and the expenses that he actually incurred actually benefited Plaintiff by at least \$165, and he therefore suffered no harm for which he can seek damages.

Similarly, Plaintiff's breach of contract claim with respect to his compensation structure is undermined by his acknowledgment that he knowingly accepted and agreed to take an offer from his Branch Manager to go from a straight hourly wage for a 40-hour workweek with a

standard overtime premium (as set forth in Exhibit 2, which was offered to him in Mexico) to a commission- and bonus-based compensation plan that afforded Plaintiff the opportunity to make more money. (Villanueva Tr. p. 37, 48-49, 51, 55-56.) Plaintiff was not obligated to accept that structure or even remain with that structure. In fact, he asked his Branch Manager about returning to a forty-hour workweek and was informed that he was free to do so but that, in an effort to manage expenses, the Branch Manager likely would not permit him to work any hours over forty. Accordingly, because the opportunity to earn more money was better staying with the commission- and bonus-based compensation Plan, Plaintiff *knowingly chose* to remain on that plan. (Villanueva Tr. pp. 57-58.)

Several other facts to which Plaintiff admitted at his deposition further underscore his inadequacy as a class representative, if only because the differentiating factors between Plaintiff and other potential plaintiffs render their contract-based claims too dissimilar for class treatment. For example, Plaintiff never worked for TruGreen, nor had he ever worked in the United States prior to joining TruGreen. (Pl. Tr. 17.) By contrast, many employees return to employment with TruGreen and, therefore, not only are aware of TruGreen's compensation structure but may be paid on different compensation structures, depending on the manager, the branch, and the position each H-2B worker holds. Further, Plaintiff willingly left TruGreen mid-season for a number of individualized reasons—a minor injury to his back, his disappointment with the wages he was receiving, and his sense that eventually some workers were going to have to return to Mexico. (Villanueva Tr. 60-61.) By contrast, other H-2B workers remained in TruGreen's employ for an entire season, which often extends through November.

In short, based on his admissions that he knowingly agreed to the terms and conditions of his compensation and that he suffered no damages with respect to the expenses paid by him,

Plaintiff must concede that he does not have any legal or factual basis to move forward with any of the contract-based claims set forth in the Complaint. Taken together with the additional significant differentiating facts that explain the different compensation and contractual agreements as between TruGreen and its H-2B workers, as well as the different compensation and contractual agreements as between Plaintiff and other H-2B workers, Plaintiff should not be permitted to proceed with his highly individualized claim on a class-wide basis..

III. CONCLUSION

Plaintiff's deposition testimony makes clear that the unsubstantiated assertions in the Complaint that he is "similarly situated" to TruGreen's current and former H-2B workers is simply not the case. To the contrary, Plaintiff's deposition testimony reveals in numerous ways why this matter is not appropriate for collective or class action treatment – because these are, at best, highly individualized claims that should not become an administrative burden to the Court or TruGreen as a class or collective action.

To the extent Plaintiff attempts to divert attention from the facts to argue that all that is at issue is whether TruGreen is required, by law, to compensate for certain deductions, that response only highlights what TruGreen has suspected about this matter from the beginning – that Plaintiff and his counsel are improperly using the courts to effect legislative change because there undeniably is no such legal obligation for H-2B workers under any existing laws, rules, or regulations. For all of these reasons, as well as the reasons set forth in TruGreen's initial opposition memorandum, TruGreen respectfully requests that Plaintiff's Motion for Conditional Certification be denied and all other appropriate relief.

Respectfully submitted,

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OF COUNSEL:
MORGAN, LEWIS & BOCKIUS, LLP

Dated: October 20, 2006

Attorneys for Defendants

EXHIBIT A TO BRIEF

PART 1 OF 2

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

RAMON VILLANUEVA, : CIVIL ACTION
Individually and all :
others similarly :
situated, :
Plaintiff :

vs.

TRUGREEN LIMITED :
PARTNERS AND TRUGREEN, :
INC. d/b/a TRUGREEN :
CHEMLAWN, :
Defendants :

NO. 06-185

October 5, 2006

Videotaped Oral Deposition
of RAMON VILLANUEVA, held in the law
offices of Morgan Lewis, LLP, 1701
Market Street, 12th Floor, Philadelphia,
Pennsylvania 19103, beginning at
approximately 9:29 AM, before Ann V.
Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
Court, and a Notary Public of the
Commonwealth of Pennsylvania.

ESQUIRE DEPOSITION SERVICES
1600 John F. Kennedy Boulevard
Four Penn Center, 12th Floor
Philadelphia, Pennsylvania 19103
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

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17

PRESENT:

18

Andrea Regal, Spanish Interpreter

19 ParapLus Translations, Inc.

20 Michael Matejik,

TruGreen

21

Jason Hoffman, Videographer

22

23

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DEPOSITION SUPPORT INDEX

DIRECTION TO WITNESS NOT TO ANSWER

Page 32 Line 12

REQUEST FOR PRODUCTION OF
INFORMATION

Page 53 Line 19

STIPULATIONS

(NONE)

1 THE VIDEOGRAPHER: Good
2 morning. We're now on the record. My
3 name is Jason Hoffman. I'm a
4 videographer employed by Esquire
5 Deposition Services, 1600 JFK Boulevard,
6 Suite 1210, Philadelphia, Pennsylvania,
7 19103.

8 This is a video deposition
9 for the United States District Court,
10 District of Delaware. Today's date is
11 October 5, 2006. The time is 9:29 a.m.

12 This deposition is being
13 held at Morgan, Lewis in Philadelphia,
14 Pennsylvania in the matter of Ramon
15 Villanueva versus TruGreen Limited
16 Partners and TruGreen, Inc.

17 The deponent is Ramon
18 Villanueva.

19 Present today counsel please
20 introduce yourselves for the record.

21 MR. TUDDENHAM: Edward
22 Tuddenham for the plaintiff.

23 MS. RAPPOSELLI: Vivian
24 Rappposelli for the plaintiff.

1 MR. GONZALES: Peter
2 Gonzales for the plaintiff.

3 MS. BOUCHARD: Sarah
4 Bouchard for TruGreen.

5 MR. MATEJIK: Michael
6 Matejik for TruGreen.

7 THE VIDEOGRAPHER: And the
8 court reporter will now swear in the
9 witness.

10 MR. TUDDENHAM: Just so it's
11 on the record, Mr. Matejik is here as a
12 corporate rep, not as an attorney, I
13 assume?

14 MS. BOUCHARD: That's
15 correct.

16 THE INTERPRETER: Andrea
17 Regal, the interpreter.

18 THE COURT REPORTER: Would
19 you raise your right hand.

20 MS. HENKE: Beth Henke for
21 defendants.

22 THE VIDEOGRAPHER: The court
23 reporter will swear in the witness.

24

Ramon Villanueva

1 ...ANDREA REGAL, Spanish
2 Interpreter, 430 Clements Bridge Road,
3 Barrington, NJ 08007, having been duly
4 sworn to translate the testimony, was
5 examined and testified as follows:

6 ...RAMON VILLANUEVA,
7 Mesquite 318, Fraccion California,
8 Cueramaro, Guanajuato, Mexico 36960
9 having been duly sworn was examined and
10 testified as follows:

11 EXAMINATION

12 BY MS. BOUCHARD:

13 Q. Good morning,
14 Mr. Villanueva. My name is Sarah
15 Bouchard and I'm here to take your
16 testimony today in the case that you've
17 brought against TruGreen.

18 A. Good morning.

19 Q. I'm going to set forth a
20 couple of ground rules for the
21 deposition today so that this can run
22 smoothly. I need you to ask any
23 questions that you don't understand;
24 otherwise, I'm going assume that you

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Ramon Villanueva

1 have understood the question as I've
2 posed it to you.

3 I need you to verbalize all
4 of your responses, which means yes or no
5 or words to verbalize your responses
6 rather than gestures.

7 A. I understand.

8 Q. In you need a break, just
9 let me know, we can take one as long as
10 the question is not pending.

11 A. That's fine.

12 Q. Okay. Your attorneys may
13 object to a question. They are
14 objecting for the record. And once they
15 are finished objecting, you should
16 answer unless they specifically instruct
17 you not to.

18 A. That's fine.

19 Q. Finally, you are under oath
20 and this is no different than if you
21 were in a court reporter of law.

22 A. I understand.

23 Q. Are you on any medications
24 today?

Ramon Villanueva

1 A. No.

2 THE INTERPRETER: Excuse me.

3 BY MS. BOUCHARD:

4 Q. Without telling me what you
5 talked about with your attorneys, what
6 did you do to prepare for today's
7 deposition?

8 A. Well, I don't know because
9 the only thing we did was speak, so I
10 don't know how to answer you.

11 Q. Did you review any
12 documents?

13 A. Yes.

14 Q. Which ones?

15 A. I saw several documents,
16 some of which I had seen before, they're
17 mine, but I wouldn't know which ones to
18 tell you because, pardon me, I don't
19 know what they are called.

20 THE INTERPRETER: Excuse me.

21 BY MS. BOUCHARD:

22 Q. If you remember reviewing
23 them recently, when I show them to you,
24 just let me know, throughout the

ESQUIRE DEPOSITION SERVICES

Ramon Villanueva

1 deposition.

2 A. Okay, that's fine.

3 Q. Have you ever been involved
4 in a lawsuit before?

5 A. No.

6 Q. What's your current
7 immigration status?

8 A. I'm tourist.

9 Q. How long does that entitle
10 you to be in the United States?

11 A. My permit expires on I
12 think the 6th of this month.

13 Q. When did it begin?

14 A. I don't remember the day,
15 but it was in April. I don't remember
16 the day.

17 Q. So you have been on a
18 tourist visa for six months?

19 A. No. The thing is I've
20 returned to Mexico. The first time I
21 got my permit was in April, but then I
22 went back to Mexico and came back again,
23 so....

24 Q. When you had your tourist

Ramon Villanueva

1 visa in April, when did you return back
2 to Mexico?

3 A. I think I went back in
4 May. I don't remember the date.

5 Q. Do you have passport stamps
6 that would show when you were here this
7 year?

8 A. Well, my passport doesn't
9 have any stamps because I think they
10 just give me the form, and I believe
11 it's an E-94 (sic) form.

12 Q. Do you have a copy of the
13 E-94 form?

14 A. Well, I have the E-94 that
15 allows me to be here. I don't have
16 copies of it.

17 Q. Do you have it in your
18 possession today?

19 A. No, it's in my suitcase.

20 Q. Did you get an E-94 when
21 you were here in April?

22 A. Yes.

23 Q. And did you retain a copy
24 of the E-94 from your April visit?

Ramon Villanueva

1 A. It's the same one I have
2 now.

3 Q. And that's the one that's
4 in your suitcase?

5 A. Yes.

6 Q. And would that evidence all
7 of the times that you've been in the
8 United States for this year?

9 A. No.

10 Q. What were you doing when
11 you came to the United States in April?

12 A. What was I doing where?

13 Q. What was the purpose of
14 your visit?

15 A. I came to visit my uncle.

16 Q. Where does your uncle live?

17 A. In San Diego.

18 Q. Other than the trip you
19 took in April, were there any other
20 visits to the United States this year
21 besides this one?

22 A. Well, when I went back to
23 Mexico in I believe it was May and then
24 I think again in October -- pardon, I'm

Ramon Villanueva

1 sorry, August.

2 Q. Just to clarify, you came
3 on a travel visa in April to May and
4 then came in August. And then when did
5 you leave back to Mexico?

6 A. Well, I'm here.

7 Q. You have been on the travel
8 visa since August?

9 A. Yes.

10 Q. Who have you been visiting
11 since August?

12 A. Only my uncle, and some
13 friends, but....

14 Q. What's your current home
15 address?

16 A. Mesquite 318, Fraccion
17 California, Cuernavaca, Guanajuato,
18 Mexico, and the Zip code is 36960.

19 Q. What did you do to earn
20 money this year?

21 A. Work.

22 Q. Where?

23 THE INTERPRETER: I asked
24 the witness to please repeat it.

Ramon Villanueva

1 THE WITNESS: Oh, I'm taking
2 the Fifth Amendment.

3 MS. BOUCHARD: Can we take a
4 break?

5 MS. RAPPOSELLI: Sure.

6 MR. TUDDENHAM: Sure.

7 THE VIDEOGRAPHER: Off tape
8 9:45.

9 (Recess.)

10 THE VIDEOGRAPHER: Back on
11 the record 9:58.

12 BY MS. BOUCHARD:

13 Q. Mr. Villanueva, you just
14 took the Fifth Amendment with respect to
15 my question as to where you were working
16 in 2006. Is that because you were
17 working in the United States this year?

18 MR. TUDDENHAM: Objection.

19 He took the Fifth Amendment to that
20 question and I don't think you are
21 entitled to keep asking him the same
22 question over and over again.

23 BY MS. BOUCHARD:

24 Q. How many hours did you work

Ramon Villanueva

1 this year?

2 MR. TUDDENHAM: Same
3 objection. Let me consult with my
4 client for a moment.

5 THE VIDEOGRAPHER: Off tape
6 9:59

7 (Mr. Tuddenham,
8 Ms. Rapposelli, Mr. Gonzales and the
9 witness conferred outside of the
10 deposition room.)

11 THE VIDEOGRAPHER: Back on
12 the record 10:00.

13 MR. TUDDENHAM: For the
14 record, we object. He has invoked his
15 Fifth Amendment with respect to that
16 question, and I don't believe you are
17 entitled to keep asking the question in
18 different ways to try and trick him into
19 waiving his Fifth Amendment right.

20 MS. BOUCHARD: My question
21 is a different one. I asked him how
22 many hours he worked in 2006. Some of
23 those hours could be in a lawful place
24 for him to work.

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Ramon Villanueva

1 MR. TUDDENHAM: They could
2 be, but he is entitled to invoke his
3 Fifth Amendment right, and he has.

4 MS. BOUCHARD: Is he also
5 invoking it for that question?

6 MR. TUDDENHAM: Yes. He is
7 going to invoke it for any question like
8 that.

9 MS. BOUCHARD: Well, I need
10 him to do that because that would mean
11 that he did not work any hours in a
12 lawful place.

13 MR. TUDDENHAM: Fifth
14 Amendment right, when he invokes it,
15 doesn't mean anything at all. It is
16 neither an affirmative answer or a
17 negative answer.

18 THE VIDEOGRAPHER: Off tape
19 10:02.

20 (Recess.)

21 THE VIDEOGRAPHER: Back on
22 the record 10:03.

23 BY MS. BOUCHARD:

24 Q. Are you taking the Fifth

Ramon Villanueva

1 Amendment with respect to how many hours
2 you worked in 2006?

3 A. Yes.

4 Q. My question now is for last
5 year, 2005, where did you work?

6 A. In Cuernavaca.

7 Q. Is that in Mexico?

8 A. Yes.

9 Q. Did you work in the United
10 States at any time in 2005?

11 A. No.

12 Q. For 2004 my question is
13 this: Did you in fact go home to Mexico
14 after leaving TruGreen?

15 A. Yes.

16 Q. Isn't it true that you went
17 to California after leaving TruGreen?

18 A. No.

19 Q. You didn't tell Lisa McHugh
20 that you were in Los Angeles in 2004?

21 A. I don't remember.

22 Q. When you left TruGreen,
23 they provided you with an airline
24 ticket; correct?

Ramon Villanueva

1 A. Yes.

2 Q. And they paid for your
3 return flight home to Mexico?

4 A. A part of it.

5 Q. What do you mean by "a part
6 of it"?

7 A. I paid the remainder of
8 what the ticket cost after the cost of
9 the bus.

10 Q. Isn't it true that TruGreen
11 provided you with an airline ticket for
12 your trip home to Mexico?

13 A. Yes.

14 Q. And that ticket was
15 provided to you?

16 A. Yes.

17 Q. Did you in fact return to
18 Mexico on that ticket?

19 A. Yes.

20 Q. And was that because you no
21 longer wanted to work at TruGreen
22 anymore?

23 A. Yes.

24 Q. If TruGreen paid for the

Ramon Villanueva

1 airline ticket, what transportation
2 costs did you incur on the way home?

3 MR. TUDDENHAM: Objection;
4 form.

5 You can answer.

6 A. Part of the plane ticket.

7 Q. Are you saying that came
8 out of your paycheck in some way?

9 A. No.

10 Q. Then how did you pay for
11 part of the plane ticket?

12 A. In cash.

13 Q. Who did you provide that
14 cash to?

15 A. To Mike.

16 Q. The person that's sitting
17 next to me?

18 A. Yes.

19 Q. How much cash did you
20 provide to him?

21 A. I think it was somewhere
22 around \$75.

23 Q. You left midway through the
24 season in 2004; correct?

Ramon Villanueva

1 A. Yes.

2 MR. TUDDENHAM: Sarah, is it
3 possible to make it a little warmer in
4 here?

5 MS. BOUCHARD: Sure.

6 THE VIDEOGRAPHER: Off tape
7 10:09.

8 (Recess.)

9 MS. BOUCHARD: Let's go back
10 on the record.

11 (The following took place
12 off the video record:

13 MS. BOUCHARD: We're going
14 back on the record and for the record, I
15 have asked for an I-9 to show that he is
16 lawfully in the United States right
17 now. He has indicated that it's in his
18 suitcase, which I understand is within
19 walking distance, and I have requested
20 it now, particularly given the answers
21 that he has given with respect to the
22 Fifth Amendment. You have said that you
23 are not going to get it right now and
24 I'm requesting you to do so.

Ramon Villanueva

1 MR. TUDDENHAM: I will tell
2 you what, Sarah: As I explained to you
3 at the beginning of this, he has to
4 catch an airplane to Mexico. The
5 deposition has to be end by 2:30. If
6 you would like to spend the time between
7 now and 2:30 having us to go walk to
8 find the -- it's an I-94, I will be
9 happy to do that right now.

10 MS. BOUCHARD: Then I would
11 like that to happen.

12 MR. TUDDENHAM: Great.

13 (Recess.)

14 THE VIDEOGRAPHER: Back on
15 the record 10:37.

16 BY MS. BOUCHARD:

17 Q. Mr. Villanueva, I'm going
18 to ask you some background questions.
19 What is your marital status?

20 A. I am married.

21 Q. Do you have any children?

22 A. Yes.

23 Q. How many?

24 A. One.

Ramon Villanueva

1 Q. Boy or girl?

2 A. Girl.

3 Q. And how old is she?

4 A. She just turned 4.

5 Q. What's your educational
6 background?

7 A. Five years in university.

8 Q. What's the university
9 called?

10 A. University of Guadalajara.

11 Q. Have you had any other H-2B
12 positions prior to TruGreen?

13 THE INTERPRETER: Did you
14 say H-2B?

15 MS. BOUCHARD: Positions.

16 A. No.

17 Q. Had you worked in the
18 United States prior to coming to the
19 United States for TruGreen?

20 A. No.

21 Q. What type of work did you
22 do in Mexico prior to working for
23 TruGreen?

24 A. Giving classes.

Ramon Villanueva

1 MS. BOUCHARD: To the
2 translator, does that mean taking
3 classes?

4 THE INTERPRETER: Giving
5 classes, teaching.

6 BY MS. BOUCHARD:

7 Q. Okay. What did you teach?

8 A. Math and junior high school
9 classes.

10 Q. How long did you teach
11 those courses?

12 A. I don't remember exactly.

13 Q. I think I might have asked
14 this question already, but did you did
15 you work in the United States for any
16 other person besides TruGreen?

17 MR. TUDDENHAM: You mean?

18 MS. BOUCHARD: In 2004.

19 A. No.

20 Q. Have you had any other H-2B
21 positions after TruGreen?

22 A. No.

23 Q. Have you had any other work
24 visa that legally allows you to work in

Ramon Villanueva

1 the United States after TruGreen?

2 MR. TUDDENHAM: Objection,
3 calls for a legal conclusion that he is
4 not competent to give you, but he can
5 answer.

6 A. I'm taking the Fifth
7 Amendment.

8 Q. How did you learn about the
9 opportunity to work at TruGreen?

10 A. In the recruiting office in
11 Mexico.

12 Q. What is the recruiting
13 office's name?

14 A. If I'm not mistaken, it's
15 LLS.

16 Q. Okay. Who did you speak to
17 in the recruiting office?

18 A. I don't remember their
19 name. I only know it was a woman.

20 Q. What did you learn about
21 the position that interested you?

22 A. The salary.

23 Q. What was told to you at
24 that time about the salary?

Ramon Villanueva

1 A. It was the highest on the
2 list they showed me.

3 Q. What did the list include?

4 A. Well, names of other
5 companies, but I don't remember them.

6 Q. Did he have any other
7 people that he knew that were also
8 interested in jobs with TruGreen?

9 Let's strike that question;
10 okay?

11 MR. TUDDENHAM: Can you
12 rephrase it saying "you." You are
13 saying "he."

14 MS. BOUCHARD: Okay.

15 BY MS. BOUCHARD:

16 Q. Did you know of any other
17 people that had also worked for
18 TruGreen?

19 A. No.

20 Q. At the time you were
21 learning about the position, what did
22 you understand the position to be?

23 A. In regard to what?

24 Q. Did you understand it to be

Ramon Villanueva

1 a laborer position?

2 A. Not necessarily, but I
3 didn't expect it to be anything
4 different.

5 MR. TUDDENHAM: For the
6 record, just -- your question "laborer"
7 was translated "manual labor."

8 MS. BOUCHARD: Okay.

9 BY MS. BOUCHARD:

10 Q. What I was asking is
11 whether you remember the title of your
12 job to be laborer or applicator.

13 THE INTERPRETER: Applicator
14 you said?

15 A. I don't remember.

16 MS. BOUCHARD: Mark this.

17 (Below-described document
18 marked as Villanueva Exhibit 1.)

19 BY MS. BOUCHARD:

20 Q. Thank you for providing us
21 with your I-94 form. I have a question
22 about your I-94 form based on testimony
23 you've previously given. I understand
24 from your testimony that you entered the

Ramon Villanueva

1 country in August, most recently; is
2 that correct?

3 A. That's true.

4 Q. My understanding is that
5 the I-94 should reflect that somewhere
6 on this document.

7 A. No.

8 Q. Is this the only document
9 that you received since April?

10 A. Yes.

11 Q. And just to clarify, you
12 came here in April?

13 A. Okay. The thing is this
14 form that I have here is what they gave
15 me when I came in April. But I had
16 another that, if I'm not mistaken, they
17 gave to me -- they gave me the 26th of
18 February that allowed me to come in and
19 go out over the border.

20 And so when I went back to
21 Mexico in April -- and so when I came
22 back to the United States through Los
23 Angeles, this is the one they gave me
24 because my understanding was that the

Ramon Villanueva

1 other one was to be able to go and come
2 across the border.

3 Q. So were you California at
4 the end of March of this year?

5 A. May I see a calendar?

6 Q. A calendar of the month of
7 March?

8 A. Well, the thing is that I
9 don't remember the dates exactly. And
10 if I came up in February, then it may
11 have been in March. The thing is I
12 don't remember because I was coming and
13 going.

14 MR. TUDDENHAM: It may have
15 been in California in March, is what he
16 said.

17 THE INTERPRETER: I'm
18 sorry. Did I not say that, may have
19 been?

20 MS. RAPPOSELLI: In
21 California.

22 MR. TUDDENHAM: In
23 California.

24 THE INTERPRETER:

Ramon Villanueva

1 California.

2 BY MS. BOUCHARD:

3 Q. Do you remember having a
4 conversation with Lisa McHugh over the
5 phone in March of this year?

6 A. Yes.

7 Q. And what did you two talk
8 about?

9 A. Well, I was a bit confused
10 because I thought it was another friend
11 of mine by the name of Lisa. So I was
12 actually asking about Lisa, the friend
13 of mine.

14 Q. On this same phone call?

15 A. I think so, if I'm not
16 mistaken.

17 Q. So you thought that you
18 were talking to someone else other than
19 Lisa McHugh but you were asking about
20 Lisa McHugh?

21 A. Well, when I called the
22 office, I asked for Lisa.

23 And so this woman answered
24 and I thought it was the Lisa that I was

Ramon Villanueva

1 asking for and then -- and so then it
2 was clarified that she was not the
3 person that I was looking for, and so
4 then I did start asking about the person
5 that I was asking for.

6 Q. Why were you calling
7 TruGreen's offices?

8 A. Because she didn't answer
9 her cell phone.

10 Q. What were you intending to
11 talk to Lisa about?

12 A. Well, we're friends and I
13 just wanted to know how she was and what
14 she was doing.

15 Q. Did you ask anyone at
16 TruGreen to take documents for you?

17 A. No.

18 Q. What expenses did you incur
19 in obtaining H-2B visa and traveling to
20 the United States to work for TruGreen?

21 A. Well, I don't remember the
22 numbers exactly, but it was the amount
23 for the office in Guanajuato. I think
24 that was 155 and then the cost for the

Ramon Villanueva

1 visa, which was about 200, and then the
2 cost for transportation from my home to
3 Delaware.

4 Q. Did your employer in 2006
5 pay for your transportation costs to and
6 from Mexico?

7 MR. TUDDENHAM: Excuse me?

8 Objection. What employer in
9 2006 are you talking about?

10 MS. BOUCHARD: He said he
11 worked in 2006.

12 THE WITNESS: No.

13 MR. TUDDENHAM: Objection.
14 Why don't you try clarifying your
15 question?

16 BY MS. BOUCHARD:

17 Q. You can answer.

18 A. Could you please repeat the
19 question?

20 Q. You have been traveling to
21 and from Mexico from the United States
22 in 2006; correct?

23 A. Yes.

24 Q. And you have been working

Ramon Villanueva

1 in the United States in 2006; correct?

2 MR. TUDDENHAM: Objection.

3 He has taken the Fifth Amendment to that
4 question three or four times. And I
5 mean it, Sarah, when someone invokes the
6 Fifth Amendment, it doesn't become a
7 game where you get to keep trying to ask
8 the question in a different way to trick
9 him to say something else.

10 MS. BOUCHARD: Well, my
11 question is actually --

12 MR. TUDDENHAM: He has taken
13 the Fifth Amendment. You have your
14 answer.

15 I'm going to direct him not
16 to answer the question.

17 MS. BOUCHARD: So I just
18 want to make clear, my question is a
19 different one, and it's whether his
20 employer in 2006 paid for transportation
21 costs to and from the United States.

22 And I just want to make sure
23 that that is the question that you are
24 invoking the Fifth on.

Ramon Villanueva

1 MR. TUDDENHAM: Well, I
2 would ask you to clarify what employer
3 you are talking about.

4 No. You need to have some
5 foundation for that. I mean --

6 MS. BOUCHARD: Because you
7 are taking the Fifth on the foundational
8 question.

9 MR. TUDDENHAM: Sarah, if
10 you will clarify what you were talking
11 about, he may be able to answer the
12 question. But if you are going to ask a
13 question that is so vague that it could
14 cover anything, he is invoking his Fifth
15 Amendment right.

16 MS. BOUCHARD: Well, I was
17 trying to clarify that and then you
18 interrupted me. So my question for the
19 foundation was --

20 MR. TUDDENHAM: Well, I
21 apologize.

22 MS. BOUCHARD: My question
23 for the foundation was --

24 BY MS. BOUCHARD:

Ramon Villanueva

1 Q. The employer that you
2 worked for in the United States, did
3 that employer pay for your
4 transportation costs in 2006?

5 MR. TUDDENHAM: Objection;
6 foundation. Objection. He has invoked
7 the Fifth Amendment to any questions
8 involving work in the United States in
9 2006. You have your answer to that.
10 BY MS. BOUCHARD:

11 Q. What were your travel costs
12 from Mexico to Delaware in 2004?

13 A. Well, I don't remember
14 exactly the numbers because I paid for
15 several, several tickets.

16 Q. Several bus tickets?

17 A. Yes.

18 Q. Can he approximate the
19 cost?

20 I mean can you approximate
21 the cost? My apologies.

22 A. I think it was somewhere
23 around \$170 and then whatever I paid for
24 food, and that I have no idea.

Ramon Villanueva

1 (Below-described document
2 marked as Villanueva Exhibit 2.)

3 BY MS. BOUCHARD:

4 Q. What's been marked before
5 you as Exhibit 2 has the title "Employer
6 Disclosure Affidavit." Do you see the
7 box "Rent and utilities per month"?

8 Yes?

9 A. Yes.

10 Q. And do you see it says
11 \$373?

12 A. Yes.

13 Q. Isn't it true that you were
14 not in fact charged \$373 for rent and
15 utilities?

16 A. Well, not entirely. Well,
17 and, if it was, I wouldn't know how to
18 show you because on my check the -- it
19 wasn't there entirely.

20 Q. Isn't it true that you were
21 charged \$60 per week for rent and
22 utilities?

23 A. I think that was only the
24 rent, as far as I understand.

Ramon Villanueva

1 Q. Didn't that also include
2 utilities and transportation?

3 A. I suppose so because I
4 didn't pay for them aside from that.

5 Q. So you paid approximately
6 \$240 per month for rent, utilities, and
7 transportation charges?

8 A. What do you mean by
9 "utilities"? What is meant by
10 "utilities"?

11 Q. Electricity.

12 A. Oh, then that's right.
13 Except for the phone.

14 Q. You had to pay for the
15 phone charges separately?

16 A. Yes. My companion was in
17 charge of that; but, yes, we did have to
18 pay for that separately. It wasn't
19 much.

20 Q. Was your local service paid
21 for by TruGreen? Was your local phone
22 service paid for by TruGreen?

23 A. I think so, yes.

24 Q. And I apologize if I asked

Ramon Villanueva

1 this, but is this your signature on this
2 document?

3 A. Yes.

4 MR. TUDDENHAM: Sarah, why
5 don't clarify what document you just
6 referred to?

7 MS. BOUCHARD: I'm referring
8 to Exhibit 2, the only one with a
9 signature. Oh, except the other one --
10 I apologize.

11 BY MS. BOUCHARD:

12 Q. Who communicated the offer
13 in Mexico about the TruGreen job?

14 A. The person that was in the
15 office; I don't know who that is.

16 Q. Did you understand that to
17 be an LLS employee?

18 A. No.

19 Q. Who was it then?

20 A. Well, we had to choose
21 someone from the list and they were the
22 ones that were going to give us the
23 contract or contract us, and in this
24 case it was TruGreen.

Ramon Villanueva

1 Q. There was no employee in
2 Mexico from TruGreen, was there, that
3 talked to you?

4 A. That's true, no.

5 Q. You said you did not know
6 anyone who had worked previously for
7 TruGreen?

8 A. That's true.

9 Q. What were you told before
10 you accepted the offer about
11 compensation and overtime?

12 A. What's "compensation"?

13 Q. The amount that you are
14 paid.

15 A. I'm sorry. Once again,
16 what was the question?

17 Q. What were you told about
18 your pay and overtime pay before you
19 accepted?

20 A. I only knew what was on
21 this paper.

22 MR. TUDDENHAM: And, for the
23 record, the witness is indicating
24 Exhibit 2.

Ramon Villanueva

1 BY MS. BOUCHARD:

2 Q. Did you understand that
3 TruGreen would provide a uniform to you
4 at no cost to you?

5 A. Well, I didn't know that
6 because I didn't even know that I was
7 going to be using a uniform.

8 Q. At some point did you learn
9 that you would be using a uniform?

10 A. I think when I got to
11 Delaware.

12 Q. Did you ever have to pay
13 for the uniform?

14 A. No.

15 Q. Were you told in Mexico
16 that there may be opportunities to be
17 promoted at TruGreen?

18 A. No. And what's more, the
19 person that told me about it didn't even
20 know what all was -- what all it
21 entailed.

22 Q. The person that you spoke
23 to did not know all the terms and
24 conditions of the TruGreen's employment

Ramon Villanueva

1 when you spoke to that person?

2 A. I was referring to the job
3 itself. She didn't know exactly what I
4 would be doing.

5 Q. But you accepted the job
6 anyway?

7 A. Yes.

8 Q. Was the only TruGreen
9 facility that you worked for in
10 Wilmington?

11 A. As far as I know, unless I
12 have worked for another office without
13 knowing it. But I believe so.

14 Q. Okay. Was Mike Matejik
15 your supervisor?

16 A. Yes.

17 Q. Do you know Jim Vacchiano?

18 A. No.

19 Q. How many other H-2B workers
20 were there when you were there?

21 A. Well, I met five, and I
22 suppose that's all of them.

23 MR. TUDDENHAM: Are we
24 giving them separate numbers or --

Ramon Villanueva

1 MS. BOUCHARD: No.

2 (Below-described document
3 marked Villanueva Exhibit 3.)

4 BY MS. BOUCHARD:

5 Q. What's been marked as
6 Exhibit 3 should be a three-page
7 document. Does everyone have three
8 pages?

9 A. Yes.

10 Q. On TruGreen Bates numbered
11 15, which I believe is the third page,
12 did you read this before signing it?

13 A. I don't recognize -- I
14 don't remember.

15 Q. You don't remember whether
16 you read it or not?

17 A. I don't remember whether I
18 read it or not because I don't remember
19 or given that I don't remember.

20 Q. Do you normally sign
21 documents that you have not read?

22 A. No.

23 Q. So do you think you did
24 read this document, in retrospect?

EXHIBIT A TO BRIEF
PART 2 OF 2

Ramon Villanueva

1 A. I don't know what to tell
2 you because there were so many documents
3 that I signed.

4 Well, I have to recognize
5 the fact that I didn't pay attention to
6 them in particular. Everybody was
7 signing and so I signed.

8 Q. Were there some documents
9 in Mexico that you may not have read as
10 well and just signed?

11 A. Well, in Mexico the only
12 thing they gave me were these documents,
13 the ones that are marked No. 1 and 2 --
14 no, I'm sorry, just No. 2, so that's
15 easy to remember.

16 Q. So those are the only two
17 documents that you signed in Mexico, the
18 ones that you just previously mentioned?

19 A. Well, actually it was only
20 two documents, this document and another
21 document that I don't have here. But
22 this was the only one I signed.

23 MS. BOUCHARD: This is going
24 to be Exhibit 4.

Ramon Villanueva

1 (Below-described document
2 marked as Villanueva Exhibit 4.)

3 MR. TUDDENHAM: Do you have
4 a copy for me?

5 MS. BOUCHARD: Oh, I'm
6 sorry, Ed.

7 BY MS. BOUCHARD:

8 Q. Mr. Villanueva, is this
9 your handwriting on this document which
10 has been marked as Exhibit 4?

11 A. Yes.

12 Q. And did you see -- first of
13 all, did you read this document before
14 signing it?

15 A. I think so. I believe so.

16 Q. Then did you understand in
17 Paragraph 8 that the costs that were
18 identified in Paragraph 7 were your
19 responsibility?

20 A. Yes.

21 Q. But you came to -- you
22 agreed to pay those; correct?

23 A. I paid them.

24 Q. But those are the costs

Ramon Villanueva

1 that you are disputing now in your
2 lawsuit?

3 A. May I speak to my
4 attorney?

5 Q. Sure.

6 THE VIDEOGRAPHER: Off tape
7 11:25.

8 (Recess.)

9 THE VIDEOGRAPHER: Back on
10 the record 11:27

11 MS. BOUCHARD: Could the
12 court reporter repeat the question
13 that's pending on the record?

14 (The court reporter read the
15 record as follows:

16 "QUESTION: But those are
17 the costs that you are disputing now in
18 your lawsuit?")

19 A. Yes.

20 Q. Why did you take the job
21 with TruGreen even though you had to pay
22 those expenses?

23 A. Well, because on the list
24 it was the best salary. And the people

Ramon Villanueva

1 that connected me up to the office said
2 that those were the costs that one had
3 to pay -- yes, the costs.

4 Q. Did you see the TruGreen
5 job as an opportunity to make money that
6 you could not make in Mexico?

7 A. Definitely, yes, and above
8 all much more quickly.

9 Q. Did you receive \$150 in
10 cash -- let me strike that question.
11 Let me go back to this.

12 This document that's Bates
13 stamped RV-2, was that presented to you
14 in Mexico or Delaware?

15 MS. RAPPOSELLI: Can we
16 reference Defendant's Exhibit 4? Is
17 that what you're referencing?

18 A. Yes.

19 Q. When you arrived in
20 Delaware, you received \$150 cash when
21 you got there; correct?

22 A. Yes.

23 Q. You never had to repay that
24 money back?

Ramon Villanueva

1 A. Yes, that's true.

2 Q. And you could use that
3 money how you wanted to?

4 A. Well, yes, even though that
5 at that moment it had to be for food.

6 Q. And is that what you used
7 it for?

8 A. Yes, and I believe I bought
9 a blanket or something like that.

10 Q. Did you receive any other
11 advances from Mike?

12 A. No.

13 Q. That \$150 was not actually
14 an advance, but what I'm asking you is
15 whether you could have asked Mike for
16 mean if you needed it sooner.

17 MR. TUDDENHAM: Objection,
18 form.

19 A. I don't know.

20 Q. Did you know of any other
21 workers that asked Mike for money sooner
22 than it was earned?

23 A. No. As far as I know, no.

24 Q. Do you know how other

Ramon Villanueva

1 TruGreen branches pay their H-2B
2 workers?

3 A. No.

4 Q. Do you know if TruGreen
5 paid some of the costs of your housing?

6 A. No.

7 Q. You don't know?

8 A. No, I don't know.

9 Q. Do you know what your
10 actual transportation costs were? In
11 other words, do you know if TruGreen
12 paid for some of your transportation
13 costs?

14 MR. TUDDENHAM: From where
15 to where?

16 BY MS. BOUCHARD:

17 Q. I'm just talking while
18 working in the Delaware area.

19 THE INTERPRETER: I'm
20 sorry. Your answer to from where to
21 where?

22 MS. BOUCHARD: In the
23 Delaware Valley.

24 A. Well, the only place we

Ramon Villanueva

1 went -- well, practically the only place
2 we went was to the office, and for that
3 Mike gave us passes for the bus.

4 Q. Do you know how much the
5 bus pass actually cost?

6 A. No.

7 Q. Did you ever ask why you
8 were being undercharged for
9 transportation, rent, and utilities?

10 MR. TUDDENHAM: Objection,
11 form.

12 THE INTERPRETER: Rent,
13 transportation?

14 A. No.

15 Q. How did you learn that you
16 were going to take the position as
17 specialist at TruGreen?

18 MR. TUDDENHAM: Objection;
19 form.

20 A. I didn't know -- I didn't
21 know it was going to be that position.

22 Q. Did you have a conversation
23 with Mike about the specialist position
24 and the benefits that could come from

Ramon Villanueva

1 you working as a specialist?

2 A. Well, I don't quite
3 understand because I didn't speak to
4 Mike until I got here. And when I got
5 here, I was just supposed to do what I
6 was supposed to do.

7 Q. Do you recall a
8 conversation with Mike, with other H-2B
9 workers present, where he described the
10 specialist position and the opportunity
11 to earn more money in that position?

12 A. Well, I remember him
13 telling us about what the job would be,
14 but I don't remember anything about
15 another position, any other position.

16 Q. Do you recall him comparing
17 the specialist position to the laborer
18 position?

19 A. No, I don't think so. I
20 don't remember.

21 Q. Do you recall him talking
22 to you about bonuses that you could earn
23 as a specialist?

24 A. I remember him speaking to

Ramon Villanueva

1 us about commissions, but the position
2 of specialist I really didn't even know.

3 Q. My question, though, is
4 about bonuses. Do you recall getting
5 any bonuses?

6 A. I think so, yes. If you're
7 referring to the commissions that
8 appeared on our checks, then, yes.

9 Q. And you recall getting
10 commissions?

11 A. Sometimes.

12 Q. What would the commissions
13 be based upon, if you remember?

14 A. On production.

15 Q. Is there any discussion of
16 commissions based on production in
17 what's marked as RV-1? And I'm not sure
18 what that's Bates numbered. I
19 apologize.

20 MR. TUDDENHAM: Sarah,
21 before the record gets totally messed
22 up, RV-1 is his I-94.

23 MS. BOUCHARD: No. RV --

24 MR. TUDDENHAM: Sarah, could

Ramon Villanueva

1 you use the exhibit numbers? You
2 started with exhibit numbers this
3 morning.

4 MS. BOUCHARD: What exhibit
5 number is it for the record?

6 THE INTERPRETER: I have no
7 idea because I don't have them. What
8 exhibit number are you looking at?

9 A. I can tell you it's
10 Exhibit No. 2.

11 BY MS. BOUCHARD:

12 Q. What I'm referring to, for
13 the record, is Exhibit No. 2 and I'm
14 asking if this document reflects any
15 commissions that you could potentially
16 earn.

17 A. Yes.

18 Q. And does it say how much?

19 A. No.

20 Q. Did you have any
21 understanding of how much commission you
22 would earn when you were in Mexico and
23 signed this document?

24 A. No.

Ramon Villanueva

1 Q. But you accepted the
2 position anyway?

3 A. Yes, I accepted it because
4 of the salary.

5 Q. What salary are you
6 referring to?

7 A. The one on this page, what
8 it says here on this page.

9 Q. Okay. I see an hourly rate
10 on that page but I don't see a
11 guaranteed salary.

12 A. I think it's a question of
13 language. In Spanish we refer to this
14 as salary.

15 Q. Okay. Thank you.

16 A. You're welcome.

17 Q. Did you independently keep
18 track of your hours other than -- yeah,
19 did you independently keep track of your
20 hours on a piece of paper?

21 A. Sometimes I did so.

22 Q. Do you still have those
23 pieces of paper?

24 A. I wouldn't know to tell you

Ramon Villanueva

1 for sure because if I do have them, they
2 are buried under a bunch of papers in
3 Mexico. So I wouldn't know to tell you
4 for sure.

5 Q. As part of this lawsuit,
6 have you checked your records in Mexico
7 to make sure that you've produced
8 everything that's related to this
9 lawsuit to your attorneys?

10 A. Well, yes, some in Mexico
11 and some before I left here.

12 Q. And so you just stated,
13 though, that you think they are
14 underneath some other papers in Mexico.

15 MR. TUDDENHAM: Objection,
16 form.

17 A. Well, what I was referring
18 to is before I left for Mexico I
19 reviewed some documents and -- and so --
20 and they're there, they were there. And
21 then when I spoke to my attorneys --

22 THE INTERPRETER: I'm
23 sorry. I lost it entirely.

24 A. Well, some documents I

Ramon Villanueva

1 reviewed here and one of them was this
2 one. And then others I reviewed in
3 Mexico when I was there.

4 MR. TUDDENHAM: I don't
5 think the witness is understanding your
6 questions.

7 BY MS. BOUCHARD:

8 Q. My question is this: My
9 question is, you said you had a piece of
10 paper or pieces of paper where you
11 tracked the number of hours that you
12 worked at TruGreen. Where are those
13 pieces of paper?

14 A. In Mexico.

15 Q. And why haven't you
16 produced those to your attorneys?

17 A. They haven't asked for them.

18 MS. BOUCHARD: Those would
19 truly be covered by the disclosures.

20 MR. TUDDENHAM: I assure
21 you, Sarah, if they can be found, you
22 will get a copy of them.

23 MS. BOUCHARD: Okay. He
24 seems to suggest that he still has them

Ramon Villanueva

1 in Mexico, by his testimony.

2 MR. TUDDENHAM: Well,
3 actually what he first said was they
4 might be in Mexico. If they exist,
5 believe me, we would be just as
6 interested in seeing them as you.

7 MS. BOUCHARD: Okay.

8 BY MS. BOUCHARD:

9 Q. What was the type of work
10 that you did on a daily basis for
11 TruGreen?

12 A. To apply chemicals on the
13 grass -- lawns.

14 Q. To different homes or where
15 would you go?

16 A. At different homes and
17 different places.

18 Q. How would you get to those
19 different places?

20 A. Well, in a pickup truck or
21 a truck of TruGreen's. It depended on
22 what it may be.

23 Q. Was there a designated
24 worker who would drive?

Ramon Villanueva

1 A. At first, yes.

2 Q. Did that person have a
3 different job description than you did?

4 A. I don't know.

5 Q. Okay. Did you enjoy the
6 work?

7 A. Well, it was work and they
8 paid me. It was work.

9 Q. Could you have earned more
10 money if you had worked more hours?

11 A. In one day?

12 Q. In other words, if you had
13 asked to work more hours, would they
14 have allowed you to work more hours and
15 make more money?

16 A. In the way that they paid
17 me, not necessarily. In the way that I
18 was paid, not necessarily.

19 Q. Why?

20 A. Because the more hours I
21 worked, the less they paid me per hour.

22 Q. But you still would have
23 been getting more money because you
24 would be working more?

Ramon Villanueva

1 A. Yes, but my work would be
2 worth less, my efforts would be worth
3 less.

4 Q. Do you understand that
5 that's a lawful way to pay people in the
6 United States?

7 MR. TUDDENHAM: Objection,
8 calls for a legal conclusion.

9 MS. BOUCHARD: I'm just
10 asking if he knows. I'm not asking --

11 MR. TUDDENHAM: Well, he's
12 not a lawyer. If you want to ask him
13 his opinion as a layperson, be my guest.

14 MS. BOUCHARD: Yes.

15 A. In my opinion?

16 Q. Yes.

17 A. No.

18 Q. Did you complain at some
19 point about how you were paid?

20 A. Yes.

21 Q. And who did you complain to?

22 A. Well, I believe I did so
23 many times. So I don't remember the
24 first time, but I believe it was at

Ramon Villanueva

1 least on some occasions to Mike.

2 Q. And who else did you
3 complain to?

4 A. Well, I believe it was to
5 my manager -- well, he wasn't my
6 manager, but Kevin Davis.

7 Q. Who is Kevin Davis?

8 A. Well, I believe he was the
9 manager of another group of workers.

10 Q. Were they H-2B workers?

11 A. I don't think so.

12 Q. When you complained to Mike
13 about how you were paid, what did he
14 tell you?

15 A. Well, he said that it was
16 fine and he explained to me once again
17 the way to be paid. And he said if I
18 wished, I could be paid according to
19 what this page says but that if I was
20 paid the way it says here, then I
21 wouldn't receive commissions or
22 overtime.

23 MR. TUDDENHAM: And for the
24 record, the witness is indicating

Ramon Villanueva

1 Exhibit 2.

2 BY MS. BOUCHARD:

3 Q. So did you decide, based on
4 that conversation, to remain being paid
5 in the same way that you started being
6 paid?

7 A. Yes, for two reasons:
8 because if I chose to work by the hour,
9 then according to what Mike said, I
10 could only work 40 hours. And the other
11 reason is that he said it would be fine,
12 that I would make more money, and it was
13 just a question of time.

14 Q. Were you promised any
15 number of overtime hours in Mexico?

16 A. No.

17 Q. You had mentioned another
18 person who I believe it was a field
19 manager. What did you say to him about
20 how you were being paid?

21 MR. TUDDENHAM: Objection;
22 form. For the record, are you talking
23 about?

24 BY MS. BOUCHARD:

Ramon Villanueva

1 Q. You mentioned Kevin Davis?

2 A. (Witness shakes head.)

3 Q. What did you say to him
4 with respect to your complaints about
5 wages?

6 A. Well, I asked him if that
7 was all right and whether it was allowed
8 to do that. And he explained to me once
9 again the pay, the way in which I was
10 paid.

11 Q. Did anyone in Mexico
12 promise you a certain amount of
13 commissions?

14 A. No.

15 Q. Did you strain your back at
16 some point while working for TruGreen?

17 A. Yes.

18 Q. And you were paid for
19 that -- oh, let me stop.

20 You missed a day of work for
21 that?

22 A. Yes.

23 Q. And you were paid for that
24 day even though you didn't work;

Ramon Villanueva

1 correct?

2 A. I don't remember, but it's
3 probable that, yeah.

4 But I just want to clarify
5 something: That the problem was
6 actually not the day of work but that as
7 a result I could not meet my quota of
8 production.

9 Q. Did your injury preclude
10 you from working hours that you wanted
11 to?

12 A. I'm just referring to that
13 day.

14 Q. Oh, that day. So you
15 weren't able to make commissions on that
16 day but you were paid for that day?

17 A. And, well, as I said
18 before, I suppose so, but I don't
19 remember exactly.

20 Q. Why did you decide to leave
21 TruGreen?

22 A. I believe I had many
23 reasons to do so, but the main reason
24 was that I was not receiving what I was

Ramon Villanueva

1 told I would receive, what's on this
2 paper.

3 Q. Which is Exhibit 2?

4 A. Yes.

5 Q. Isn't it true that you just
6 stated that Mike said that you could go
7 to this system of compensation if you
8 wanted?

9 MR. TUDDENHAM: Objection;
10 form.

11 A. It's true that he told me
12 that, but at that point in time he told
13 me that I would be better off staying
14 with commissions because I could earn
15 more money.

16 Q. And you chose to stay on
17 the commission plan?

18 A. Yes.

19 Q. What other reasons did you
20 decide -- what were the other reasons
21 you decided to leave TruGreen
22 mid-season?

23 A. My back was not all right,
24 and because I received what you might

Ramon Villanueva

1 call a proposition from Mike that he had
2 to return some of of us to Mexico.
3 Basically that's it.

4 Q. So you chose to volunteer?

5 A. Well, if one could call it
6 volunteer, based on all of the bad
7 things involved, yes.

8 Q. Did other H-2B workers
9 decide to stay?

10 A. I don't think he offered
11 anyone else to leave.

12 Q. That wasn't my question,
13 though. My question was, were you the
14 only H-2B worker that left?

15 A. As far as I know, yes.
16 Well, I at least returned alone.

17 MS. BOUCHARD: Do you want
18 to stop so we can do the video?

19 THE VIDEOGRAPHER: This
20 concludes videotape No. 1 at 12:03.

21 (Recess.)

22 THE VIDEOGRAPHER: We're
23 back on the record. This is the
24 beginning of Tape 2. The time is

Ramon Villanueva

1 12:14.

2 BY MS. BOUCHARD:

3 Q. When you returned to Mexico
4 in 2004, did you immediately begin
5 working?

6 A. No.

7 Q. When did you start working
8 in 2004, if at all?

9 A. If I'm not mistaken, I
10 don't think it was until September.

11 Q. And what did you do?

12 A. Give classes.

13 Q. And what was your hourly
14 wage giving classes?

15 A. You're going to laugh.

16 Q. If you could estimate it in
17 American dollars, that would be great.

18 A. Something like \$2.

19 Q. \$2 an hour?

20 A. (Witness shakes head.)

21 Q. And about how many hours
22 per week did you work?

23 A. Somewhere around 50.

24 Q. On what's marked as

Ramon Villanueva

1 Exhibit 2 it states "Skills" and it says
2 "valid driver's license, bilingual."
3 Did you have a valid driver's license?

4 A. Yes.

5 Q. And are you bilingual?

6 A. Well, I wouldn't know how
7 to -- I don't believe that I have the
8 ability to evaluate that.

9 Q. But you presented yourself
10 as bilingual to TruGreen?

11 A. Well, in reality it wasn't
12 me who made that decision. It was the
13 person with whom I spoke in Guanajuato.
14 She was asking me some questions in
15 English and that's what she decided,
16 that I was bilingual.

17 MS. BOUCHARD: Okay. Thank
18 you. I don't have any further
19 questions.

20 MR. TUDDENHAM: We will
21 reserve ours to the time of trial.

22 THE VIDEOGRAPHER: That
23 concludes today's videotape deposition.
24 The time is 12:19.

Ramon Villanueva

1 (Witness excused.)

2 (Whereupon the examination

3 adjourned at 12:19 p.m.)

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Ramon Villanueva

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C E R T I F I C A T E

I hereby certify that the witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness

It was requested before completion of the deposition that the witness RAMON VILLANUEVA, have the opportunity to read and sign the deposition transcript.

Ann V. Kaufmann

Ann V. Kaufmann, RPR, CRR

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or

Ramon Villanueva

1 supervision of the certifying reporter.)

2 INSTRUCTION TO THE WITNESS

3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the
6 reason in the appropriate space on the
7 errata sheets for any corrections that
8 are made.

9 After doing so, please sign
10 the errata sheet and date it.

11 You are signing same subject
12 to the changes you have noted on the
13 errata sheet, which will be attached to
14 your deposition.

15 It is imperative that you
16 return the original errata sheet to the
17 deposing attorney within thirty (30)
18 days of receipt of the deposition
19 transcript by you. If you fail to do
20 so, the deposition transcript may be
21 deemed to be accurate and may be used in
22 court.

23
24
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ACKNOWLEDGEMENT OF DEPONENT

I, -----, do
hereby certify that I have read the
foregoing pages, ----- and that the
same is a correct transcription of the
answers given by me to the questions
therein propounded, except for the
corrections or changes in form or
substance, if any, noted in the attached
errata sheet.

DATE

Subscribed and sworn to me this -----
day of -----, 2005.
My Commission expires:

Notary Public

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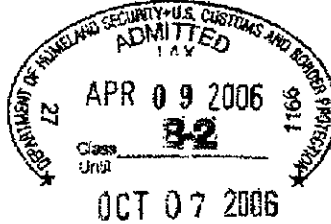
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Número de tarjeta

07478274012

Servicio de Inmigración
y Naturalización
I-34
Registro de Salida



14. Apellido VILLANUEVA		15. Fecha de nacimiento (dd/mm/aaaa) 21/10/1978
16. Nombre RAMON		
17. Ciudadanía MEXICAN		

Vea al reverso

STAPLE HERE

Aviso: Si una persona no inmigrante acepta empleo sin autorización está sujeta a deportación.
Importante: Guarde este permiso en su poder; *lo debe presentar al salir de los E.U.A.* El no hacerlo podrá demorar su entrada en el futuro a los E.U.A.
 Usted está autorizado a permanecer en los E.U.A. solamente hasta la fecha indicada en este formulario. Si permanece en los E.U.A. sin permiso de las autoridades de inmigración después de esta fecha estará violando las leyes.

Presente este permiso al salir de los Estados Unidos a:

- la línea de transporte marítimo o aéreo;
- un oficial canadiense, al cruzar la frontera con el Canadá;
- un oficial estadounidense, al cruzar la frontera con México.

Los estudiantes que planean volver a entrar a los E.U.A. dentro de los 30 días siguientes a la fecha de salida para regresar a la misma institución educativa, deben ver la sección de "Entrada-Salida" en la página 2 del formulario I-20, antes de entregar este permiso.

Record of Changes

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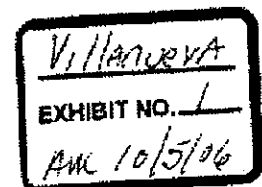
Departure Record

Date:

Carrier:

Flight#/Ship Name:

I-34 SPANISH



E.L.S. International

Página 1 de 1

Employer Disclosure Affidavit
 for Company: Tru-Green Chemlawn (Newport)
 Order Dated: 9/29/2003 9:52:52 AM

view premium rates
 view Spanish form
 close this window

Name of Sponsoring H-2B company	Tru-Green Chemlawn (Newport)
Address:	1350 1st State Blvd, Newport, DE 19804
Office Phone:	302-892-9680
Fax Phone:	302-833-9428
Mobile Phone:	302-420-8335
Home or Other Phone:	302-378-8185
Contact Name:	Mike A. Matejka
Contact Title:	Branch Manager

Work Information

Occupation Title: Pesticide Handlers, Sprayers, and Applicators, Vegetation

Occupation Description:

Apply pesticides, herbicides, fungicides, or insecticides to lawns using sprayers, seeders, spreaders, aerators

Employment Start Date:

3/15/2004 End Date: 11/15/2004

List the tasks and skills needed to perform the work.

Education: none

Experience: lawn fertilization very helpful

Skills: valid driver's license; bilingual

Starting wage offered

\$11.34 O.T. Rate: \$17.01

(if different from prevailing wage):

Average hours of work per week:

40

Rent and utilities per month:

373

Transportation charge per month (if applicable):

32

Other charges to worker per month (if any):

Comments/Instructions for worker:

Workers will receive commission based on production level

Day and place paycheck is distributed:

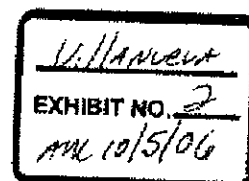
Friday

Will the employer guarantee to supply training if the employee does not have the required skills? YES

Signature of Employee:

Ramon Chlanueva

Date:

02/20/04

RV-0001

TRUGREEN
ACUERDO DE CONFIDENCIALIDAD DEL EMPLEADO

TruGreen Limited Partnership (de aquí en adelante, "TruGreen") ha invertido considerable tiempo, dinero, y esfuerzos en el desarrollo de sus productos, equipos, programa de comercialización y otros sistemas y materiales de negocios, y en el reclutamiento y entrenamiento de sus empleados. TruGreen es propietaria y tienen un interés de propiedad valioso en sus diversos productos, servicios, procedimientos, y sistemas (Información Confidencial de Negocios). Como empleado de TruGreen, usted tendrá acceso a la Información Confidencial de Negocios, incluyendo la información relativa a la investigación, productos, entrenamiento, administración, comercialización, y ventas.

Es importante que cada empleado reconozca y acepte que la Información Confidencial de Negocios, según exista de tiempo en tiempo, es un patrimonio valioso, especial, y único de TruGreen, y que TruGreen sufriría graves pérdidas si dicha información fuese divulgada o apropiada indebidamente. El propósito de este documento es explicar ciertas obligaciones y responsabilidades legales aplicables a cada empleado con respecto a la Información Confidencial de Negocios de TruGreen, y obtener el acuerdo de cumplir estas obligaciones y responsabilidades.

Pan proteger a TruGreen y a su información de propiedad exclusiva, me comprometo a lo siguiente:

A. Me comprometo a, durante y después de mi empleo en TruGreen, no divulgar, copiar, usar, reditar, ni usar en mi beneficio propio o en beneficio de otros la Información Confidencial de Negocios de TruGreen (incluyendo, de forma no exhaustiva, su administración, manuales de comercialización y ventas, materiales de entrenamiento, listas de clientes, legajos de clientes, tarjetas de ventas, y tarjetas de servicio) que yo tenga o haya obtenido por medio de mi empleo en TruGreen.

B. No solicitaré ni alentará, directa o indirectamente, a ningún empleado de TruGreen a alejarse o terminar su empleo en TruGreen.

C. Autorizo a TruGreen, durante mi empleo y durante un período posterior razonable, a usar cualquier nombre o fotografía en los materiales impresos u otras comunicaciones distribuidas por TruGreen con fines publicitarios y promocionales.

D. Notificaré a TruGreen rápidamente de todas las invenciones, mejoras, descubrimientos, y métodos que tengan relación con, o sean de utilidad para cualquier negocio de TruGreen, ahora o en el futuro, que yo haga o descubra mientras sea empleado de TruGreen. Cederé a TruGreen todos los derechos, títulos, e intereses en dichas invenciones, mejoras, descubrimientos, y métodos, y cualesquiera patentes o solicitudes de patentes relacionadas que tengan que ver con negocios que TruGreen esté realizando, o pueda razonablemente esperarse que realice, o que haya expresado previamente su intención de realizar.

En caso de una violación o amenaza de violación por mi parte de cualquier provisión de este acuerdo, los daños que TruGreen podría sufrir pueden ser difíciles o imposibles de evaluar, por lo cual TruGreen tendrá derecho a un mandamiento judicial que me impida usar o divulgar la Información Confidencial de Negocios de TruGreen. Nada de lo aquí contenido se interpretará como una prohibición a TruGreen de buscar otros remedios que tenga disponibles para dicha violación o amenaza de violación, incluyendo, en forma no exhaustiva, el recobro de daños de mí por una cantidad igual a los ingresos ganados por medio o gracias a la violación.

Entiendo que este Acuerdo solo podrá ser modificado por escrito, y ello sólo por el Presidente de TruGreen, y que ningún otro gerente o representante tiene ninguna autoridad para establecer ningún acuerdo de empleo por un período especificado, ni de hacer ningún acuerdo contrario al que antecede. Entiendo además, y acepto, que la consideración para firmar este Acuerdo es mi empleo y/o continuación de empleo en TruGreen, y que mi empleo puede terminarse, con o sin causa y con o sin aviso, en cualquier momento, tanto por TruGreen como por mí. Entiendo también y acepto que pagaré los honorarios razonables de abogados y los costos judiciales incurridos por TruGreen como consecuencia de cualquier demanda judicial iniciada por TruGreen para hacer valer los términos de este Acuerdo. La validez o la posibilidad de hacer cumplir una provisión dada no afectará la validez o la posibilidad de hacer cumplir ninguna otra provisión de este Acuerdo.

03/10/04

Por: [Signature]

RAMON VILLANUEVA BAZALDUZ

TruGreen Limited Partnership
 Por: TruGreen, Inc. (su Socio General)

Fecha: 3/19/04

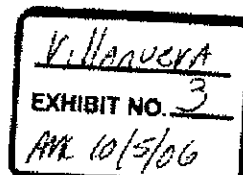
Por: [Signature]

Nombre y cargo en imprenta: Valeria Miller Bec

TH SPAN.3/2001

TU SPAN. 5/99

TRU0013



Form **8850**
(Rev. October 2002)
Department of the Treasury
Internal Revenue Service

**Pre-Screening Notice and Certification Request for
the Work Opportunity and Welfare-to-Work Credits**

OMB No. 1545-1500

5079082100 4/1/02

~~You must fill in the lines below and check any boxes that apply.~~

Your Name: RAMON WILLAQUEVA BAZALDUA Social Security Number: 222-98-0252

Street address where you live: 213 BELMONT AVE.

City or town, state and ZIP code: 19804

Telephone No. ()

If you are under age 25, enter your date of birth (month, day, year)

Work Opportunity Credit

- 1 ☐ Check here if you received a conditional certification from the state employment security agency (SESA) or a participating local agency for the work opportunity credit.
- 2 ☐ Check here if any of the following statements apply to you.
- I am a member of a family that has received assistance from Aid to Families with Dependent Children (AFDC) or a successor program for any 9 months during the last 18 months.
 - I am a veteran and a member of a family that received food stamps for at least a 3-month period within the last 15 months.
 - I was referred here by a rehabilitation agency approved by the state or the Department of Veterans Affairs.
 - I am at least age 18 but not over age 24 and I am a member of a family that:
 - a Received food stamps for the last 5 months, OR
 - b Received food stamps for at least 3 of the last 5 months, BUT is no longer eligible to receive them.
 - Within the past year, I was convicted of a felony or released from prison for a felony AND during the last 6 months I was a member of a low-income family.
 - I received supplemental security income (SSI) benefits for any month ending within the last 60 days.

Welfare-to-Work Credit

- 3 ☐ Check here if you received a conditional certification from the SESA or a participating local agency for the Welfare-to-Work Credit.
- 4 ☐ Check here if you are a member of a family that:
- Received AFDC or successor program payments for at least the last 18 months, OR
 - Received AFDC or successor program payments for any 18 months beginning after August 5, 1997, OR
 - Stopped being eligible for AFDC or successor program payments after August 5, 1997, because Federal or state law limited the maximum time those payments could be made.

All Applicants

Under penalties of perjury, I declare that I gave the above information to the employer on or before the day I was offered a job, and it is, to the best of my knowledge, true, correct, and complete.

Applicant's signature

Date:

03/20/04

For Privacy Act and Paperwork Reduction Act Notice, see page 2.

Cat. No. 33962L

Form 8850 (Rev. 10-02)

TRU0014

Manual del empleado de TruGreen

Formulario de reconocimiento del empleado

Este Manual del Empleado contiene información pertinente acerca de TruGreen y comprendo que debo consultar al departamento de servicios a las personas de TruGreen si tengo alguna pregunta que no haya sido respondida en este Manual.

Como las informaciones, políticas y beneficios aquí descritos están necesariamente sujetos a cambio, reconozco que podrán ocurrir revisiones de este Manual. También entiendo que las informaciones revisadas pueden suplantarse, modificarse o eliminarse políticas existentes. Sólo el presidente de TruGreen Holding L.L.C. tiene la capacidad de adoptar cualquier revisión de las políticas contenidas en este Manual.

He comenzado mi relación de empleado con TruGreen voluntariamente y reconozco que no hay una duración especificada para mi empleo. Por lo tanto, yo mismo o TruGreen podemos terminar esta relación en cualquier momento si así lo deseamos, tanto con causa como sin causa.

Además reconozco que este Manual no constituye un contrato de empleo ni es un documento legal. He leído el contenido de este Manual y entiendo que es mi responsabilidad cumplir con las políticas contenidas en el Manual y en cualquier revisión futura del mismo.

[Firma]

03/20/04

Firmado

RAMON VILLANUEVA BAZALDUA
(Firmado o con letra de imprenta)

Gerente: Mantenga una copia de este formulario completado de reconocimiento del empleado en el archivo personal del empleado y envíe el original a Memphis con los documentos del nuevo empleado acabado de contratar.

Febrero 1, 2001

Página 29

TRU0015

ACUERDO SOBRE CONDICIONES LABORALES

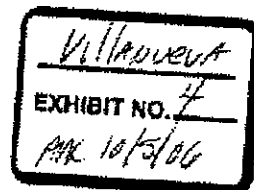
- 1) Las condiciones laborales que las compañías norteamericanas contratantes (Patrones) proporcionan a los trabajadores tienen como fin proteger al empleado y al patrón. En base a las condiciones laborales, el patrón está legalmente obligado a pagar lo estipulado en dicho documento, si el empleado no es remunerado de acuerdo a lo acordado, el o ella deberán de comunicarse a L.L.S. International (SI) 8040 7575 y 77 a fin de informar de esta situación.
- 2) El número de horas trabajadas a la semana es solamente una estimación, por lo tanto, cada trabajador debe tener en cuenta, que las condiciones climatológicas y otros eventos imprevistos pueden afectar el total de horas trabajadas a la semana y por lo tanto su ingreso. Todos los desacuerdos deben ser discutidos con el patrón que los contrató **L.L.S. NO ES EL PATRON, favor de no comunicarse para tales asuntos.**
- 3) En el caso de que la Compañía Americana que lo contrató determine que por cuestiones climáticas o de fuerza mayor no puede seguir proporcionando trabajo al empleado durante el periodo que abarque su visa de trabajo; esta deberá cubrir los gastos del empleado a su lugar de origen, ya que el empleado no puede trabajar en otra Compañía en la que no este autorizada en su visa de trabajo. Esta situación será estrictamente responsabilidad de la empresa contratante.
- 4) El trabajador solo puede dejar su trabajo por causa de una emergencia, en dado caso el trabajador esta obligado a avisarle al patrón y pedir permiso por escrito. En caso de no ser así, o que el trabajador renuncie, o se vaya del lugar de trabajo sin avisar, se le avisará al INS y al Consulado Americano, el trabajador será considerado como ilegal y pierde toda protección dada por la visa de trabajo, esto resultará en la cancelación de su visa y el trabajador perderá la posibilidad de regresar el año entrante mediante el programa de visas H2B.
- 5) El trabajador está de acuerdo y entiende que el servicio que presta L.L.S. International consiste estrictamente en el trámite de su visa de trabajo ante el Consulado Americano con su consentimiento y a petición de las Compañías Americanas contratantes. Asimismo entiende que la obtención de la visa de trabajo no depende sino estrictamente del Consulado Americano, por lo que en caso de ser rechazada su solicitud, L.L.S. International no tiene responsabilidad alguna ni compromiso de indemnizar al solicitante, únicamente a reembolsarle el importe de 100 dólares por la tramitación de su visa.
- 6) Los reembolsos solo proceden en los siguientes casos:
 - Cuando es rechazada su solicitud de visa en el consulado, en este caso se le regresarán 100 DOLARES.
 - Cuando por parte de la empresa solicitante no se llegue a realizar el trabajo estando todavía en México, se procederá a colocar al trabajador en otra empresa, en caso de no ser posible se le regresarán 255 DOLARES.
 NOTA: En todos los demás casos **NO PROCEDERA REEMBOLSO ALGUNO**
- 7) El servicio de L.L.S. International, tiene un costo de:
 - 155 dólares (USD) para L.L.S. por gastos Administrativos
 - Los siguientes pagos es lo que cobra el Consulado Americano:
 - 100 dólares (USD) por la tramitación de la visa en el Consulado
 - 100 dólares (USD) para el pago de derecho de visa en el Consulado
 - Transporte:
 - 200 dólares (USD) aproximadamente de transporte para su traslado via terrestre.
 NOTA: Estos pagos se realizan hasta que la persona haya sido seleccionada, la persona haya aceptado el trabajo y tengan un lugar seguro en alguna Compañía.
- 8) L.L.S. International o la compañía contratante en Estados Unidos no serán responsables de pagar y/o devolver sus gastos de viaje, ni los que se deriven del proceso de la visa en el Consulado Americano, **ESTA ES UNICAMENTE RESPONSABILIDAD DEL TRABAJADOR**

Este documento no asegura la obtención de trabajo.

Ramón Villanueva Berzabua
Firma del Trabajador

20-Febrero-2004
Fecha

S International (Monterrey)
Ampo No 427 Poniente
Calle Rayon y Aldama
64600
Tel: (51) 8040 7575 / 8040 7577



RV-0002

CERTIFICATE OF SERVICE

I, Andrew S. Dupre, hereby certify that a true and correct copy of Defendant;s Motion for Leave to File Supplemental Brief in Furtyher Support of its Opposition to Plaintiff's Expedited Motion to Conditionally Certify a FLSA Collective Action was served via e-file and hand delivery on this 20th day of October, 2006, upon the following:

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